

through August 25, 2005, when he voluntarily quit. The claimant quit because he was unhappy about a reprimand he had been given regarding his low sales figures, his conduct towards another mall employee, his failure to attend a training session, and his failure to turn in a record of his time off. The claimant alleges that he quit because the employer made the work environment intolerable, yet the claimant is unable to state with any specificity what was said to him or done to him that made his work environment intolerable. Continued work was available for him had he not quit.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(28) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2 (amended 1998).

The employer's exhibits establish that a meeting was held on August 19 wherein the claimant was warned about a number of behaviors, including asking an individual of Pakistani descent if he knew "how to build a dirty bomb." The written record also establishes that the claimant was warned about usual job criteria such as sales goals and signing the till cash checklist. The administrative law judge is not persuaded that one employee laughed about the claimant's son dying over ten years ago. What the administrative law judge finds more persuasive is that the claimant was unhappy with his reprimand and is now alleging intolerable working conditions in an effort to qualify for unemployment insurance benefits. Persons whose work environment is so terrible and offensive that they feel compelled to quit, remember what was said to them or done to them that caused the quit. The claimant cannot articulate any behavior that caused

him to quit other than one comment that the administrative law judge finds suspect as to whether it was ever even made. The administrative law judge concludes the claimant quit after being reprimanded. The claimant's decision to quit after having been reprimanded was not a good-cause reason attributable to the employer for leaving. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The September 14, 2005, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,158.00.

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